

TAOS

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**PUEBLO
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Governor's Office

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August 6, 2003

RECEIVED

Michael Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

AUG 18 2003

Federal Communications Commission
Office of the Secretary

RE: WT Docket No. 03-128; FCC 03-125

VIA FACSIMILE AND FIRST-CLASS MAIL

Dear Chairman Powell:

On behalf of Taos Pueblo, I am writing to address the Tribal consultation requirements under the proposed Nationwide Programmatic Agreement (NWP) for review of certain undertakings for communications facilities under the National Historic Preservation Act.

I would like to thank the FCC for meeting with the National Congress of American Indians (NCAI) and United South and Eastern Tribes (USET) leaders, and for sending FCC staff to various Indian conferences to discuss the draft NWP. Such consultation efforts are in keeping with the government-to-government relationship between the United States and sovereign Indian tribes. Initially, tribes were not properly included in the drafting process for the NWP. However, as a result of the FCC's recent efforts there are many aspects of the NWP that our tribe can support, although several critical issues remain to be resolved.

We support the development of the nationwide communications infrastructure, but we do not want it to come at the cost of our heritage, nor do we think that it has to. Over the last 500 years, Indian tribes have been pushed off of their traditional lands by successive waves of non-Indian settlement. As a result, most sites of cultural and religious importance for most tribes are not within today's tribal lands. These are sites of great importance to us. Their loss is truly irreplaceable. Many of these sites are located in elevated areas, which tend to also be favored by the communications companies for towers.

Currently, regarding Taos Pueblo, a cell/telecommunications tower has been the subject of much discussion with the FCC and tribal attorneys. This tower which is located on now non-Indian lands; what was once pueblo lands (part of an aboriginal land claim) and adjacent to existing pueblo lands, the tower has a direct impact on current and future cultural and traditional practices. This particular tower was erected without Section 106

[Signature]

tribal consultation. The National Historic Preservation Act requires the FCC to take into account the effects of such approvals on historic properties, including traditional cultural properties, and to consult with affected tribes. The Taos Pueblo and tribal attorneys have been involved in meetings and teleconferences with FCC officials on the extent to which the FCC might be able to protect sensitive cultural information the Taos Pueblo might share in the consultation. The company, county and others who may wish to locate cellular equipment and radio transmitters on the Gianna tower need FCC approval. On a separate matter, Taos Pueblo has a communications tower located on tribal land which will require an FCC license and compliance with the National Historic Preservation Act.

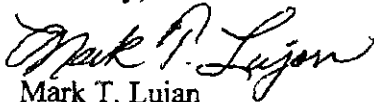
As a general matter, we endorse the comments submitted separately by NCAI and USET, who have engaged in a detailed and comprehensive analysis of the draft NHPA including two areas of special concern that we would like to emphasize here. First, the draft NHPA establishes a number of exclusions where Section 106 consultation under the National Historic Preservation Act would not be required. The justification for such exclusions appears to be an advance determination that in the excluded areas there is a minimal chance of further damaging sites of historic importance. We do not believe that these exclusions are justifiable as a matter of law, nor as a matter of practicality. The law with regard to tribal consultation is clear and provides for no exceptions: federal agencies, "shall consult with any Indian tribe and Native Hawaiian organization that attached religious and cultural significance" to properties that might be affected by a federal undertaking, 16 U.S.C. Section 470a(d)(6)(B). As a matter of practicality, just because an area has been disturbed already does not, in any way, mean that further disturbance does not cause further damage, both physical and spiritual.

One of the most important aspects of the National Historic Preservation Act, as amended in 1992, was to assure that Federal agencies would consult with Indian tribes whenever a Federal undertaking would affect a property of religious and cultural significance to a tribe, whether it was located on or off tribal lands. The draft NHPA provides two alternative approaches in Part IV for consulting with tribes when the affected tribal religious and cultural property is off tribal lands. Alternative A was developed by a working group that had virtually no tribal input. It would establish a complicated process of suspect legality. Alternative B was proposed by USET, in coordination with NCAI, and provides a very simple and straightforward mechanism that assures adequate tribal consultation and input. It states that either the FCC engages in full consultation with affected tribes (what the law currently mandates) or, as a practical alternative, the FCC shall not be required to go through this consultation process if a cell tower builder/applicant has secured a letter of certification from any affected tribes that states that such consultation is not necessary for any of several reasons. This mechanism

assures that interested tribes have their concerns fully addressed. It is absolutely critical, if our sovereignty is to be respected, and our religious and cultural properties protected, that Alternative B is adopted.

We strongly urge you to consider these concerns, and those raised by NCAI, USET, the National Association of Tribal Historic Preservation Officers, and others as you evaluate the public comments submitted on this NWP.

Sincerely,



Mark T. Lujan

Governor's Secretary-Taos Pueblo